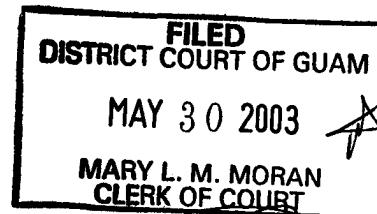


ORIGINAL

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IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

AMERICOPTERS, L.L.C.) CIVIL ACTION 03-00005

Plaintiff,)

vs.)

FEDERAL AVIATION
ADMINISTRATION,)

**MOTION TO DISMISS FOR
LACK OF JURISDICTION**

Defendants.)

The United States respectfully moves for the dismissal of the above entitled case due to a lack of jurisdiction.

The United States does not necessarily agree that the events described in the Plaintiff's Complaint are factually accurate nor that the decisions are administratively final. Taking Plaintiff's Complaint as true on its face, however, it is a cause of action against the Federal

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2
3 Aviation Administration (FAA) for an action it has taken resulting in Plaintiff being ordered to
4 cease and desist Plaintiff's helicopter operation at Chuck's Steakhouse in upper Tumon, Guam.

5 The United States Court of Appeals maintains exclusive jurisdiction to review final
6 decisions and actions made by the Federal Aviation Administration (FAA). *See* 49 U.S.C. §
7 46110; Roundtree v. United States, 40 F.3d 1036 (9th Cir. 1994). In Roundtree a pilot whose
8 certificate was suspended challenged the FAA in U.S. District Court. The court in Roundtree
9 dismissed the case for lack of jurisdiction and sanctioned the attorney. Unlike Roundtree this
10 case is simply mistakenly filed in U.S. District. Cases challenging FAA decisions and actions
11 are rare in this jurisdiction and exclusive jurisdiction for review of an agency action in the circuit
12 courts is relatively unusual.

13 Clearly, the Ninth Circuit finds jurisdiction for causes of action against the FAA to be
14 solely in the jurisdiction of the circuit courts. Tur v. Federal Aviation Administration, 104 F.3d
15 290 (9th Cir. 1996) (attack on false testimony of FAA official was collateral attack on merits of
16 FAA decision, therefor district court was without jurisdiction); Clark v. Busey, 959 F.2d 808 (9th
17 Cir. 1992) (district court lacked jurisdiction over suit challenging FAA publication of rule
18 making petition summary even though plaintiff invoked All Writs Act which does empower
19 federal courts to issue interlocutory relief for nonfinal agency action); Mace v. Skinner, 34 F.3d
20 854 (9th Cir. 1994) (no jurisdiction to review decisions of NTSB's upholding FAA orders where
21 individuals had challenged constitutionality of procedures used to revoke aircraft mechanic
22 certificate); Hawaii Helicopter Operators Association v. FAA, 51 F.3d 212 (9th Cir. 1995) (FAA
23 regulations establishing special operating rules for helicopter tour operators in Hawaii upheld).

24 In the instant case, Americopters claims that an operations inspector from the FAA took
25 actions which "had equivalent effect of an authorized and legal cease and desist order".
26 COMPLAINT at ¶ 1. Plaintiff describes a "catch 22" where the FAA, in denying its status as
27 an order, did not give notice or allow for a hearing. The plaintiff is asking the Court for
28 "(j)udgment in favor of Americopters and against the Federal Aviation Administration, ordering

1 rescission of the June 24, 2002 cease and desist order." See Plaintiff's Prayer for Relief in the
2 COMPLAINT. Only a circuit court has that jurisdiction.

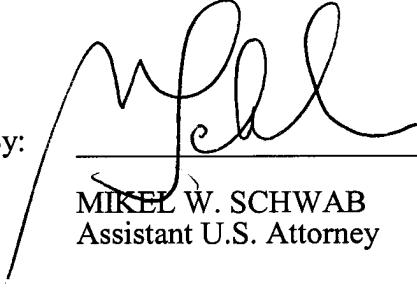
3 Plaintiff's Complaint must be dismissed for lack of subject matter jurisdiction pursuant to
4 Federal Rule of Civil Procedure 12(b)(1).

5

6 Respectfully submitted this 28th Day of May, 2003.

7

8 LEONARDO M. RAPADAS
9 United States Attorney
10 Districts of Guam and CNMI

11 By: 

12 MIKEL W. SCHWAB
13 Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Teresa Ann Catahay, hereby certify that on the 30th day of May, 2003, I caused to be served by hand-delivery, a copy of the foregoing Motion to Dismiss for Lack of Jurisdiction to the following attorney of record:

Elyze J. T. McDonald
Carlsmith Ball
Suite 401, Bank of Hawaii Building
134 West Soledad Avenue
Hagatna, Guam 96910

DATED this 30th day of May, 2003.


Teresa Ann Catahay

Teresa Ann Catahay

Clerk OA